judgment recovered there on the policy might be satisfied, seems to strengthen the conclusion reached by the majority of the court. The question involved in the principal case has been passed upon by the inferior courts of New York in *Re Abbet,* 29 Misc. 567, 61 N. Y. Supp. 1067, and *Re Horn,* 39 Misc. 133, 78 N. Y. Supp. 979. In the former case on facts very similar to those of the present case it was held that policies of insurance were not subject to a transfer tax. This case, however, seems to have been hurriedly decided, and the judge remarks that he prefers to so hold rather than to render a decision, which pending an appeal and decision by the Court of Appeals would tend to unsettle great financial interests. This decision, nevertheless, was cited and followed in *Re Horn, supra,* notwithstanding that the policy was in New York at the time of the decedent's death.

TRUSTS—EXPRESS TRUST IN REALTY—CREATION BY PAROL.—A conveyed lots to B in fee simple by a deed absolute upon its face, but with the understanding at the time that he held them in trust and would convey the title as A should direct. B, being about to marry, A procured an absolute conveyance from him to his (A's) wife with the contemporaneous parol agreement that she should hold in trust for her husband. *Held,* that such a parol trust in lands will be enforced in equity. *Insurance Company of Tennessee* v. *Waller* (1906), — Tenn. —, 95 S. W. Rep. 811.

The substance of the English Statute of Frauds has been quite generally re-enacted in the different states. In some, however, it has been enacted in a modified form and several of the sections omitted. The 7th section deals with trusts in lands. The English Statute provides that "all declarations, or creations, of trusts, or confidences in any lands, tenements, or hereditaments, shall be *manifested and proved* by some writing, signed by the party who is by law enabled to declare a trust, or by his last will in writing, or else they shall be utterly void." 29 Car. II. C. 3, Sec. 7. The American statutes in some cases use *"created or declared"* instead of *"manifested and proved,"* but the effect has generally been held to be the same. *Blodgett* v. *Hildreth* (1870), 103 Mass. 484. *Kingsbury* v. *Burnside* (1871), 58 Ill. 310; 11 Am. Rep. 67. In Tennessee, however, the 7th section has been omitted from the Code and it has been repeatedly held that a parol trust could be created under the circumstances of the principal case. *Thompson* v. *Thompson* (1899), 54 S. W. Rep. 145; *Renshaw* v. *First Nat. Bank* (1900), 63 S. W. Rep. 194; *Woodfin* v. *Marks* (1900), 104 Tenn. 512; *Mee* v. *Mee* (1904), 113 Tenn. 453. In the following states the 7th section has been omitted either alone or with other sections: *Leakey* v. *Gunter* (1860), 25 Tex. 400; *Taylor* v. *Taylor* (1854), 54 N. C. 246; *Pierson* v. *Pierson* (1874), 5 Del. Ch. 11; *Bank* v. *Carrington* (1836), 7 Leigh (Vir.) 566; *Nease* v. *Capeheart* (1874), 8 W. Va. 95; *Cranston* v. *Smith* (1859), 6 R. I. 231. In these states parol express trusts in lands have been held to be good. The majority of the states, however, have enacted the substance of the 7th section of the English Statute, and hold that parol express trusts in lands cannot be proved except by writing. *Doran* v. *Doran* (1893), 99 Cal. 311; *Walter* v. *Klock* (1870), 55 Ill. 362; *Walker* v. *Locke* (1849), 59 Mass., (5 Cush) 90; *Cobb* v. *Cook*

(1882), 49 Mich. 11; *Clark* v. *Post* (1889), 113 N. Y. 17. It would seem that those states which have not enacted the 7th section have lost much of the benefit and protection which the English legislators intended to give.

WATERS—APPROPRIATION OF WASTE WATER.—Plaintiff and defendants owned adjoining lands. In the process of spreading water upon defendants' land, some of it by surface drainage escaped therefrom upon the plaintiff's tract, who collected it and by means of an irrigating ditch running parallel with the common boundary used the water for thirteen years in raising crops. Defendants intercepted the flow and carried the water around plaintiff's land and irrigated other land owned by them. The prescriptive period in Colorado is five years. *Held,* that the plaintiff did not make a valid appropriation as against the defendants. *Burkart et al* v. *Meiberg* (1906), — Colo. —, 86 Pac. Rep. 98.

The case is interesting in view of the great variety of phases presented by litigation affecting riparian rights in the arid states where the common law principles have been modified or extended. The exact question raised is a new one and the court based its opinion squarely upon principle. That the plaintiff applied the water to a beneficial purpose cannot be doubted. "The very birth and life of a prior right to the use of water is the intention to apply the same to some beneficial purpose." KINNEY ON IRRIGATION, p. 228; *Combs* v. *Ag. Ditch Co.* 17 Colo. 146, 28 Pac. 966. Nor is it open to question that as to strangers, if otherwise the application of the water constituted an appropriation, the doctrine of relation would have applied and a valid appropriation effected. *Kirk* v. *Bartholomew* (Idaho), 29 Pac. 40; *Basey* v. *Gallagher,* 20 Wall. 670; *Jennison* v. *Kirk,* 98 U. S. 453. But as against the defendants the plaintiff could acquire no other than a mere privilege or right to the use of the water, or at most a secondary or subordinate right to that of the first appropriators, and only such as was liable to be determined by their action at any time. *Woolman* v. *Garringer,* 1 Mont. 535; *Fairplay Hydraulic M'fg. Co.* v. *Weston,* 29 Colo., 125, 67 Pac. 160.

WILLS—HOLOGRAPHIC WILLS—VALIDITY—DEVISE—REAL ESTATE.—Appellee files a bill to require appellant to specifically perform a contract of purchase of certain real estate in the city of Baltimore. Appellee claimed title to land through the will of her husband, which was executed in France, where he was domiciled, at the time the will was executed, although he was a native of Maryland and a citizen of this country. It is admitted the will was executed according to French law, which does not require two witnesses as does the law of Maryland. The principal questions are (1) Is a holographic will not witnessed but executed in accordance with the laws of the country in which it was made by a citizen of this state, domiciled in that country valid to pass real estate in this state? (2) Did the will pass the real estate in question? The Code Pub. Gen. Laws, 1904, Art. 93, No. 317, provides that all devises and bequests of any lands or tenements, or interests therein, shall be attested and subscribed in the presence of the devisor by two or more credible witnesses or else they shall be utterly void and of no effect.